IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re WILLIAM RANDY PRUITT, Debtor.	No. 95-21738 Chapter 7
KIMBERLY S. PRUITT, Plaintiff, *vs*. WILLIAM RANDY PRUITT, Defendant.	Adv. Pro. No. 96-2008

M E M O R A N D U M

APPEARANCES:

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

This is an action seeking a nondischargeability determination under 11 U.S.C. § 523(a)(5) upon certain indebtedness which arose from an interlocutory order and a final decree of divorce respectively entered by the Circuit Court of Cocke County, Tennessee on September 7 and November 20, 1995. Pending before the court is the motion for summary judgment filed by plaintiff, Kimberly S. Pruitt, asserting that there is no genuine issue as to any material fact and that she is entitled to a judgment as a matter of law. For the reasons set forth below, the court finds that plaintiff's motion for summary judgment should be denied. This is a core proceeding. 28 U.S.C. § 157(b)(2)(I).

I.

Fed. R. Civ. P. 56, as incorporated by Fed. R. Bankr. P. 7056, mandates the entry of summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In ruling on a motion for summary judgment, the inference to be drawn from the underlying facts contained in the record must be viewed in a light most favorable to the party opposing the motion. *See*

Schilling v. Jackson Oil Co. (In re Transport Associates, Inc.), 171 B.R. 232, 234 (Bankr. W.D. Ky. 1994), *citing Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 106 S. Ct. 2505 (1986). *See also Street v. J.C. Bradford & Co.*, 886 F.2d 1472 (6th Cir. 1989), *rehearing denied* (1990). No affidavits, either in support or in opposition to plaintiff's motion for summary judgment, have been filed. The court does have before it stipulations of uncontested facts by the parties which are contained in the pretrial statement filed on May 16, 1996, and the pleadings of the parties, including certified copies of the pertinent order and final decree from the Circuit Court of Cocke County which are attached to the complaint.

II.

The divorced parties are parents of three minor children. As a part of their divorce proceeding, the circuit court entered an interlocutory order on September 7, 1995, which establishes that the debtor was found to be in contempt of prior court orders, apparently for failing to make house payments as previously ordered. In that interlocutory order, the court stated that "the house payment arrearage is adjudged to be child support and the defendant is awarded a Judgement for child support in the amount of $3500.00 against the [debtor]." To

purge the contempt, the debtor was ordered pay the $3,500.00 house payment arrearage within ten days or "surrender himself to the Cocke County jail for incarceration on September 16, 1995."

The final decree of divorce entered on November 20, 1995, indicates that the debtor did not appear for trial despite proper notice having been given and recites that he "is presently a fugitive from justice," most likely as a result of his having failed to pay the $3,500.00 house payment arrearage.[1] The final decree granted plaintiff an absolute divorce from the debtor and awarded her sole custody of the minor children. Additionally, the plaintiff was "awarded as child support," the house payment arrearage to date in the amount of $4,559.04[2] and an attorney fee of $450.00, for a total award of $5,009.04 as "judgement for child support arrearage." The plaintiff was also granted a judgment "in the amount of $10,092.49 as alimony for the failure and refusal of the [debtor] to return the items of personal property he wrongfully removed from the parties[']home." Finally, the debtor was ordered to "assume and pay the

[1]The court notes that the proceeding memorandum from the 11 U.S.C. § 341(a) meeting of creditors filed in the underlying bankruptcy case states that the debtor was arrested by the Cocke County sheriff's office upon completion of that meeting.

[2]Although it is not entirely clear, it appears that this arrearage included the initial award of $3,500.00 per the September 7, 1995 interlocutory order.

deficiency balance due to American Honda Finance Corporation in the amount of $6612.32 and shall hold the [plaintiff] harmless therefore. The payment of said deficiency is awarded to the [plaintiff] as alimony ....”

III.

11 U.S.C. § 523(a)(5) provides in pertinent part that a discharge under § 727 does not discharge an individual debtor from any debt:

> to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, ... but not to the extent that ...
>
> (B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.

Accordingly, the threshold question is whether the various awards designated by the court as child support and alimony in the interlocutory order and final decree were intended to be and actually are in the nature of support or alimony. In making such a determination, the court must utilize the test set forth in *Long v. Calhoun (In re Calhoun)*, 715 F.2d 1103 (6th Cir. 1983), as modified in *Fitzgerald v. Fitzgerald (In re Fitzgerald)*, 9 F.3d 517 (6th Cir. 1993). Of course, the burden

of demonstrating that the obligations are in the nature of support and alimony rests with the plaintiff, the nondebtor spouse. *See, e.g., Chism v. Chism (In re Chism)*, 169 B.R. 163, 168 (Bankr. W.D. Tenn. 1994).

In *Calhoun*, the Sixth Circuit Court of Appeals presented a four-step analysis to assist courts in determining the true nature of such obligations. First, the court has to determine if the state court or the parties intended to create support obligations. Second, the court must determine whether the obligations have the actual effect of providing necessary support, a so-called "present needs" test. Third, the court must determine if the obligations are so excessive as to be unreasonable under traditional concepts of support. And fourth, if the amounts are unreasonable, the obligations are dischargeable to the extent necessary to serve the purposes of federal bankruptcy law. *Id.* at 1109-10.

In this case, the defendant disputes that the various obligations are in the nature of alimony and support. As a result, the court must apply the *Calhoun* test. The plaintiff states in her brief that because the debtor was not present at the trial, he is incompetent to testify as to the intent of the court. Plaintiff therefore implies that the language of the final decree conclusively evidences the intent of the court to

create support obligations. The mere fact that the obligations are labeled as support and alimony, however, does not end this court's inquiry. *See In re Chism*, 169 B.R. at 169. *See also Joseph v. O'Toole (In re Joseph)*, 16 F.3d 86, 88 (5th Cir. 1994)(a label placed upon the obligation by the consent agreement or court order which created it will not determine its subsequent dischargeability in bankruptcy). As noted in *Chism*, state court labels of alimony or child support may be applied simply to insulate a property settlement award from discharge in bankruptcy. *Id*. at 170.[3] Instead, in determining dischargeability, a bankruptcy court must "pierce" the label and ascertain whether there was an intent to create an obligation of support. *Id*. By definition, this inquiry necessitates an evidentiary hearing. As a result, the court will enter an order denying plaintiff's motion for summary judgment.

FILED: June 7, 1996

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[3]By the Bankruptcy Reform Act of 1994, Congress augmented the dischargeability provisions of § 523(a)(5) by adding § 523(a)(15), which now though their cooperative effect make all-divorce related obligations potentially subject to a determination of nondischargeability in bankruptcy. *See Robinson v. Robinson (Matter of Robinson)*, 193 B.R. 367, 372 fn.1 (Bankr. N.D. Ga. 1996). Section 523(a)(15) was not pled by plaintiff in this adversary proceeding and although the debtor states in his responsive brief that he is relying upon it, he likewise did not timely assert a counterclaim in this regard.

BY THE COURT

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE